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IN THE

Supreme Court of the United States

No. 70-5045

DONALD and EDNA LINDSEY and ALL OTHER PERSONS SIMILARLY SITUATED,

Appellants,

v.

DORTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, In His Capacity as Judge of the District Court of the State of Oregon for the County of Multnomah; and ALL PERSONS SIMILARLY SITUATED HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR LEGAL AID BUREAU, INC. AS AMICUS CURIAE

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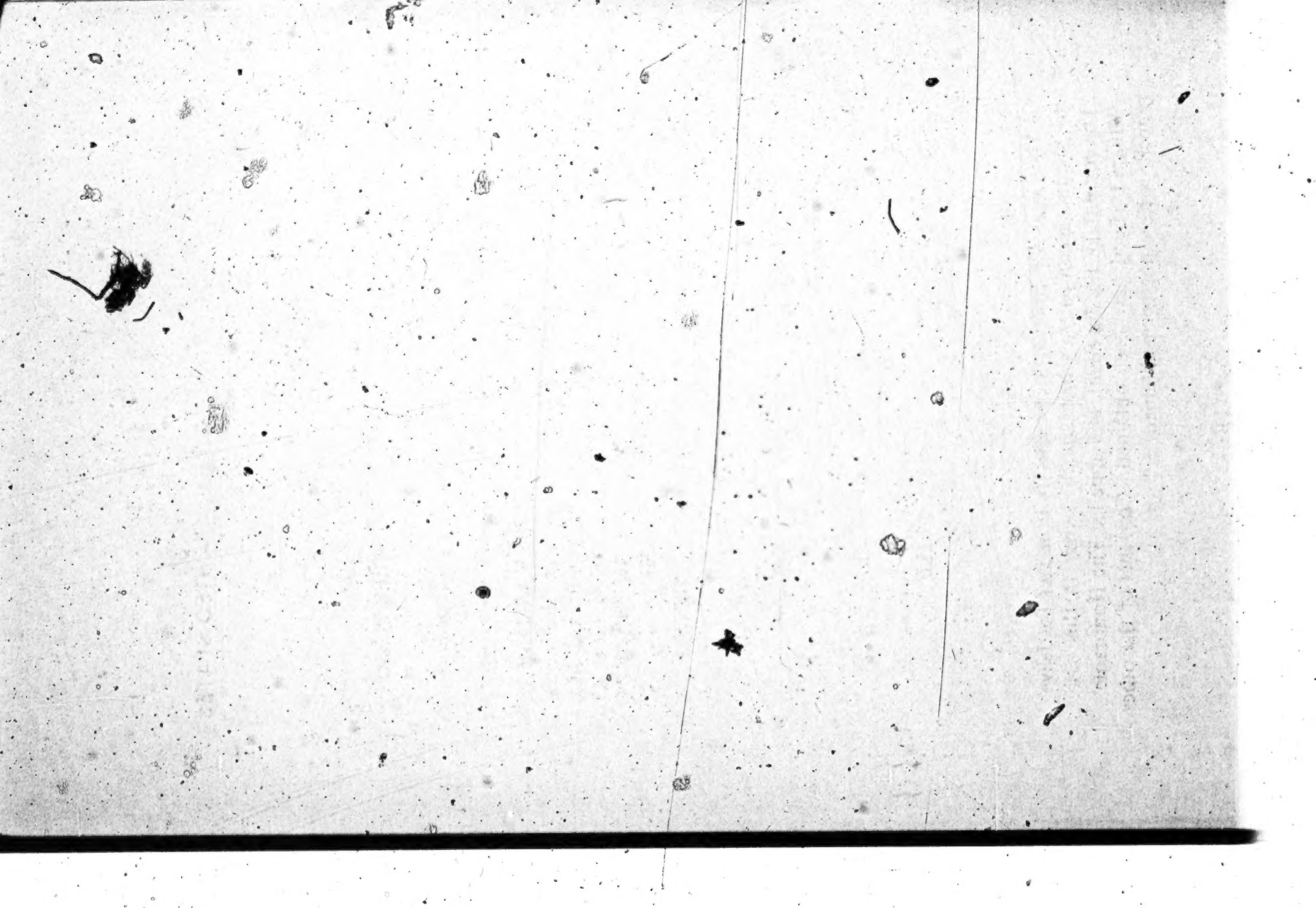

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Legal Aid Bureau, Inc. respectfully moves for leave to file the accompanying brief *amicus curiae* in this case. The consents of the appellants and appellee The Honorable William C. Beers have been obtained. Consents of the other appellees have not been obtained.

The Legal Aid Bureau, Inc. represents indigent tenants residing in Baltimore City and many of the surrounding counties. The 1970 statistics indicate that representation was afforded in 1,421 housing cases, and this case load continues to grow yearly. This should evidence the involvement of the Legal Aid Bureau, Inc. in the area of landlord-tenant law in Maryland. It is felt that the decision in *Lindsey v. Normet** will greatly affect landlord-tenant relations in our State.

Appellants will necessarily concentrate on the peculiar facts of their case. In the brief tendered with this motion, the Legal Aid Bureau, Inc. hopes to demonstrate to the Court that the issues raised in *Lindsey v. Normet* are strikingly similar to those that will be asserted in the attached *Amicus* brief. It will become apparent that the provisions of the Maryland law raise due process and equal protection issues identical to those challenged in Oregon.

Amicus contends that its brief will illustrate that the Maryland statutory provisions, governing the area of landlord-tenant law, effectively deny due process and equal protection of the law.

The grant of the appeal by the Court in this case emphasizes the fact that it evokes questions of national significance considerably beyond the usual implications of local cases dealing with landlord-tenant disputes.

WHEREFORE, it is respectfully prayed that this motion for leave to file the annexed brief *amicus curiae* be granted.

Respectfully submitted,

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*Civil No. 70-8 (D. Ore. Sept. 10, 1970), *appeal granted*, 39 U.S.L.W. 3524 (U.S. May 25, 1971) (No. 6158).

TABLE OF CONTENTS

	Page
INTEREST OF THE *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. The Summary Ejectment Procedure for Non-payment of Rent in Both the State of Maryland and Baltimore City Serves to Deny Due Process and Equal Protection	4
A. Statement of the Applicable Law	4
B. Due Process and Equal Protection are Denied Tenants Because the Applicable Law Provides for Inadequate Notice, Unreasonably Short Time to Prepare for Trial, Unjustified Restrictions on the Defenses Available, and Overly-Burdensome Appeal Bond Requirements	8
II. Maryland's Distraint for Rent Proceeding Serves to Effectively Deny Constitutionally-Mandated Due Process	11
A. Statement of the Applicable Law	11
B. Due Process is Effectively Denied Because the Applicable Law Provides for Inadequate Notice, Unreasonably Short Time to Prepare for Trial, Unjustified Restrictions on the Defenses Available, and Overly-Burdensome Appeal Bond Requirements	13
III. The Procedures in Maryland for Tenants Holding Over Effectively Denies Due Process of Law	15
A. Statement of the Applicable Law	15
B. The Applicable Law Effectively Denies Due Process to Tenants Because it Provides for Inadequate Notice, Unreasonably Short Time to Prepare for Trial, Unjustified Restrictions on the Defenses Available, and Overly-Burdensome Appeal Bond Requirements	18
IV. The Housing and Health Codes in Maryland, as Administered by the Responsible Authorities and as Constructively Suppressed by the Threat of Retaliatory Evictions (at Least Outside Baltimore City) Offer the Tenant No Effective Relief in Redressing His Legitimate Grievances Concerning Basic Living Conditions	20

Page

CONCLUSION 21

APPENDIX 1a

TABLE OF AUTHORITIES

CASES:

Clayton v. Cherigos, 79A Folio 206, 43324A (Cir. Ct. #2 Balto. City, Aug. 21, 1970) 10

Lindsey v. Normet, Civil No. 70-8 (D. Ore., Sept. 10, 1970), *appeal granted*, 39 U.S.L.W. 3524 (U.S. May 25, 1971) (No. 6158) 1, 2, 3, 21, 22

STATUTES:

ANN. CODE MD.

Article 1, § 13 4
Article 5, § 36 12
Article 43, § 103 20
Article 43, § 108 20
Article 43, § 111 21
Article 43, § 112 21
Article 43, § 113 21
Article 53, § 1 . . . . . 15, 16
Article 53, § 2 16
Article 53, § 3 16
Article 53, § 4 17
Article 53, § 5 17
Article 53, § 6 18
Article 53, § 7 15
Article 53, § 8 15
Article 53, § 9(c) 11
Article 53, § 11 11
Article 53, § 12 11
Article 53, § 15 11
Article 53, § 21 . . . . . 12, 14
Article 53, § 22 12
Article 53, § 37 12
Article 53, § 38 12
Article 53, § 39 12
Article 53, § 39N 5
Article 53, § 39-O 5

Page

Article 53, § 39P 6
Article 53, § 39Q 7
Article 53, § 39R 7, 10

CODE PUB. LOCAL L. MD.

Article 4, § 9-1 11
Article 4, § 9-2 5
Article 4, § 9-3 6
Article 4, § 9-4 6
Article 4, § 9-5 . . . . . 6, 7
Article 4, § 9-7 10
Article 4, § 9-9 . . . . . 7, 8
Article 4, § 9-14 15
Article 4, § 9-14.1 8
Article 4, § 9-17 15
Article 4, § 9-18 16
Article 4, § 9-19 16
Article 4, § 9-20 16
Article 4, § 9-23 16
Article 4, § 9-24 16
Article 4, § 9-25 17
Article 4, § 9-26 17
Article 4, § 9-27 18
Article 4, § 9-28 18
Article 4, § 9-29 18
Article 4, § 9-30 18

OTHER AUTHORITIES:

Maryland District Rules, adopted July 1, 1971 . . . . . 9, 13

U.S. Dept. of Commerce, Bureau of the Census, "1970 Census of Housing, Maryland," Feb. 1971 5

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

BRIEF FOR LEGAL AID BUREAU, INC. AS *AMICUS CURIAE*

INTEREST OF THE *AMICUS CURIAE**

In recognition of the potential importance of *Lindsey v. Normet*, Civil No. 70-8 (D.Ore., Sept. 10, 1970), *appeal*

*Letters from the appellants attorneys and one appellee, the Honorable William C. Beers, consenting to submission of the brief *amicus*

granted, 37 U.S.L.W. 3524 (U.S. May 25, 1971) (No. 6158), to the landlord-tenant field as it exists in the State of Maryland, the Legal Aid Bureau, Inc., believes that it would be of interest to this Court to describe the eviction procedures in Maryland, indicating how these procedures tend to deprive tenants of the opportunity to litigate legitimate defenses, and the possible effects of this Court's decision upon the relevant Maryland law. The *Amicus* is directly interested in and concerned about this case because of its wide experience in representing residential tenants, particularly indigents in eviction cases, and because of the potential ramification of the Court's decision in redressing the inequities that exist in Maryland landlord-tenant law. It is of critical importance that the Supreme Court recognize the existing constitutional due process problems in the landlord-tenant field generally, and in Maryland particularly.

That the *Amicus* has a great interest in the Court's decision in *Lindsey v. Normet* can best be demonstrated by a brief examination of its experience in the field of landlord-tenant law. The Legal Aid Bureau, Inc , in 1970 counseled clients in 1,421 reported housing cases, and this caseload continues to grow yearly. For every recorded client with a housing problem, it is estimated that staff attorneys counsel, in one form or another, at least two other tenants with similar problems. This caseload evidences the involvement of the Legal Aid Bureau, Inc., in the area of landlord-tenant law in Maryland. *Amicus* is greatly concerned with and will be directly affected by the decision in *Lindsey v. Normet.*

The brief of the *Amicus Curiae* will endeavor to demonstrate to the Court the state of landlord-tenant law in Maryland. Specifically, the statutes governing summary ejectment, distraint for rent, tenants holding over and housing and health codes will be set forth and analyzed. The issues

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curiae have been filed with the Clerk. The consent of the attorney for the remaining appellees was requested but never received. A Motion for Leave to File Brief *Amicus Curiae* has been filed with this brief.

raised in *Lindsey v. Normet* are strikingly similar to those that will be asserted in this *Amicus* brief. It will become apparent that the provisions of the Maryland law raise due process and equal protection issues identical to those challenged in Oregon. Specifically, these include inadequate notice to the tenant of the grounds for and parties to the suit, an unreasonably short time for the tenant to prepare for trial, an inability to raise substantive defenses (especially those based on housing code violations), and an overly burdensome appeal bond requirement. It will be clearly illustrated that these Maryland statutory provisions deny due process and equal protection of the law and whereby the decision in *Lindsey v. Normet* can serve to re-establish constitutionally-mandated guidelines.

SUMMARY OF ARGUMENT

A careful review of the relevant portions of the Landlord and Tenant Law of Maryland reveals several distressing features. Both the complaint and the summons procedures produce inadequate notice to the tenant of the grounds of and the parties to the suit and, as a direct result, severely prejudice the tenant's position. More particularly, in the Maryland summary ejectment proceeding[1] the date of trial is fixed a maximum of three (3) days, assuming a continuance is granted, after the landlord has filed his complaint irrespective of when the tenant actually receives notice of the suit. As such, these Maryland provisions countenance a patently unreasonable notice procedure and a grossly inadequate time in which to prepare for trial.

The tenant in Maryland, exclusive of Baltimore City, can effectively be denied a meaningful defense because of the narrowness of issues which can be raised at trial, particularly the inability to assert housing code violations as a defense to

[1] In the Baltimore City summary ejectment proceeding, there is a twelve day maximum period between the filing of the complaint and the date of trial, assuming a continuance is granted. See pp. 5-6, *infra*.

the withholding of rent. Combined with inadequate judicial and administrative redress for housing and health code violations and the threat of retaliatory evictions, this inability to assert such a necessary defense effectively denies legal redress to legitimate grievances urgently in need of amelioration. Thus, for the tenants of Maryland, constitutionally guaranteed due process is denied in the pre-trial and trial procedures.

The posting of a bond to stay execution of judgment pending appeal may be as much as double the actual amount of rent due and thereby prove to be so prohibitively expensive, especially to indigent tenants, that legitimate appeals are effectively and indiscriminatly pre-empted. Such a salient denial of due process should not be constitutionally tolerated.

ARGUMENT

I. THE SUMMARY EJECTMENT PROCEDURE FOR NON-PAYMENT OF RENT IN BOTH THE STATE OF MARYLAND AND BALTIMORE CITY SERVES TO DENY DUE PROCESS AND EQUAL PROTECTION.

A. Statement of the Applicable Law

The Maryland law of Landlord and Tenant is found in the Annotated Code of Maryland, Article 53 (1957) and is divided into two parts, "Tenants Holding Over"[2] and "Distress for Rent,"[3] the latter composed of distraint and ejectment proceedings. These State laws are supplemented by the Public Local Laws of Maryland, which, where applicable, will be controlling.[4] In particular, for Baltimore City there are extensive controlling Public Local Laws. The general body of these Baltimore City Statutes is found in

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[2] ANN. CODE MD., [hereinafter cited as, A.C.M.], art. 53, §§ 1-8 (1957).

[3] *Id.*, §§ 9-39R.

[4] *Id.*, art. 1 § 13.

the Code of Public Local Laws of Maryland, Article 4, Baltimore City, Subtitle 9. It should be noted that, according to the 1970 U.S. Census advance housing sheets,[5] only 157,384 of the State's total 465,761 renter-occupied units are actually in Baltimore City.

Maryland's summary ejectment procedure for non-payment of rent[6] is commenced by the landlord's written complaint[7] under oath before a district court judge. In this complaint, only the barest skeleton of information is required: a description in general terms of the property sought, the name of the tenant, and the amount of rent due and unpaid. A summons is then issued to be served by the constable directing the tenant to appear for trial on the second day after the filing of said complaint. The summons is to be served on the tenant personally, or if he is not present, then affixed conspicuously upon the premises.[8] Beginning January 1, 1972, service must also be sent to the tenant by first-class mail.[9]

In Baltimore City repossession of the premises under a summary ejectment proceeding, applicable certainly for residential tenancies of a term of one year or less,[10] is initiated as under the Maryland State Laws. The court will then issue a summons which sets the trial on the fifth day

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[5]U.S. Dept. of Commerce, Bureau of Census, "1970 Census of Housing, Maryland," February, 1971, p. 5.

[6]A.C.M., art. 53, § 39N (1957).

[7]See sample complaint form, *Appendix.*

[8]A.C.M., § 39-*O* (May 21, 1970); ch. 731, Laws of Maryland, 1970, Part 8; re-enacting A.C.M. art. 53, § 39-*O* (1957). This footnote as the other statutory footnotes to follow herein, covers all the statutory material since the last footnote in the text.

[9]A.C.M., art. 53, § 39-*O* (May 24, 1971); ch. 745, Laws of Maryland, 1971 (effective January 1, 1972).

[10]CODE PUB. LOCAL L. MD. [hereinafter cited as C.P.L.L.M.], art. 4, § 9-2 (1969).

after the filing of the complaint. This summons shall be served by a constable on or before the third day after filing, and the mode of service shall be the same as under the Maryland state law.[11] Such a summary ejectment proceeding does not preclude the landlord from bringing an independent suit for the rent due and unpaid.[12]

If it appears to the judge that justice will be better served by adjourning to enable either party to procure necessary witnesses, then a continuance of not more than one day (seven days in Baltimore City[13]), except by consent of all parties, may be granted. At the trial, if it appears to the judge that the rent or any part of the rent for the premises is actually due and unpaid, judgment shall be granted in favor of the lessor for the amount of rent found due, with costs of the suit, and the tenant shall render up possession within two days thereafter.[14] In Baltimore City, however, an extension may be granted at the court's discretion upon certification by a physician of a danger to the health or life of any occupant of the premises.[15]

Maryland state law provides that if the tenant, at the time of trial, tenders the rent found due and unpaid, together with costs, any further proceedings in the suit will be terminated.[16] On the other hand, in Baltimore City the rent found due together with costs may be tendered at any time until the actual order of execution is issued. Furthermore, until actual execution of the warrant of restitution, if the

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[11] C.P.L.L.M., art. 4, § 9-3 (May 21, 1970); ch. 731, Adv. Sheets Laws of Maryland, 1970, Part 8. A.C.M., art. 53, § 39-*O* (May 24, 1971); ch. 745, Laws of Maryland, 1971 (effective Jan. 1, 1972).

[12] C.P.L.L.M., art. 4, § 9-4 (1969).

[13] *Id.*, § 9-5.

[14] A.C.M., art. 53, § 39P (1957).

[15] C.P.L.L.M., art. 4, § 9-5 (1969).

[16] A.C.M., art. 53, § 39P (1957).

judge determines that the interests of justice clearly so require, the landlord may be compelled to accept a payment of all rent due plus court costs and all other reasonable costs in satisfaction of the complaint.[17]

If the tenant has not complied with the repossession order within two (2) days, he may be evicted by the constable, by force if necessary, if the lessor so exercises this authority and the judge issues a warrant of restitution.[18] At any time during this two day period following judgment the tenant may appeal, but in order to stay execution of the judgment a bond must be given to the landlord

> with one or more securities, who are owners of sufficient leasehold or real estate in the State of Maryland, with condition to prosecute the appeal with effect, to answer to the landlord, his executors, [or] administrators, in all costs and damages mentioned in the judgment, and such other damages as shall be incurred and sustained by reason of said appeal.[19]

As of July 1, 1971, unique to Baltimore City, there exists an amended rent escrow law[20] and concomitant retaliatory eviction law. This new escrow law is the only available remedy, permitting the withholding of rent because of imminently dangerous housing conditions. These laws provide that tenants in rent proceedings may assert defensively or affirmatively the existence of conditions that represent fire hazards or serious threats to the life, health, or safety of occupants. Under these circumstances the tenant is permitted, if the landlord has been given due notice and an opportunity to repair, to pay the rent owing into the court to be held in escrow and released to effect repairs.

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[17] C.P.L.L.M., art. 4, § 9-5 (1969).

[18] A.C.M., art. 53, § 39Q (May 21, 1970); ch. 731, Adv. Sheets, Laws of Maryland, 1970, Part 8.

[19] A.C.M., art. 53, § 39R (1957).

[20] The original rent escrow law in Baltimore City became effective July 1, 1969. C.P.L.L.M., art. 4, § 9-9 (1969).

Furthermore, absent a showing of good faith, evictions and rent increases of tenants exercising this rent escrow law are forbidden for six months following the determination of the merits of the case by the court.[21] There is also unique to Baltimore City a new warranty of habitability statute, effective July 1, 1971, that provides an implied warranty of fitness for human habitation in all leases that can only be exercised within the first thirty days of occupancy.[22]

B. Due Process and Equal Protection Are Denied Tenants Because the Applicable Law Provides for Inadequate Notice, Unreasonably Short Time To Prepare for Trial, Unjustified Restrictions on the Defenses Available, and Overly-Burdensome Appeal Bond Requirements.

Maryland's summary ejectment procedure for non-payment of rent requires no detailed pleading of fact by the landlord, because by its nature the tenant's only potential defenses, except in Baltimore City, are that payment has already been made or that no payment is actually due. This minimal pleading can prove distinctly prejudicial to the tenant because it provides inadequate notice of the grounds of the suit and the parties thereto. There exist situations when, through no fault of his own, a tenant will pay rent to the wrong landlord or agent because he has not received notice of the transfer of the right to receive such rent. Then, when the summary ejectment proceeding is initiated without a detailed pleading of facts, the tenant will be unaware of who the plaintiff is and why the proceeding has been brought. It will thus be impossible for the tenant to adequately prepare his defense, and guarantee due process, especially in the time period permitted under the statute.

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[21] C.P.L.L.M., art. 4, § 9-9 (May 24, 1971); ch. 687, Laws of Maryland, 1971.

[22] C.P.L.L.M., art. 4, § 9-14.1 (May 17, 1971); ch. 481, Laws of Maryland, 1971.

Due to the limited defenses permissible under the State summary ejectment procedure, the landlord is permitted to escape a detailed sworn fact pleading that might both better notify the tenant in order to allow for adequate preparation of a meaningful defense and better inform the court of the actual conditions surrounding this tenancy. Even if additional substantive defenses could be raised, as in Baltimore City, this lack of a detailed sworn fact pleading when combined with the absence, in both the State and the City, of any discovery procedure can effectively result in a denial of due process.[23]

An even more patent denial of due process surrounds the arbitrary determination of the trial date and notification thereof. Under Maryland state law the date of trial is set on the second day after the filing of the complaint rather than after receipt of the summons, service of which is subject to abuse. This procedure operates seemingly irrespective of how long service actually takes. There is no operative guarantee to insure that notice will actually be received even before the date of trial, thus denying due process. Even with the one day discretionary continuance, there is little prospect of more than two days total in which to prepare for the trial.

Although mailing of the summons or a copy may alleviate some of the problems of affixing it to the premises, this new service procedure highlights the inadequacy of time available in which to prepare since mail delivery takes no less than one full day and perhaps even longer. With the inadequate time to prepare meaningfully for trial which two days or less offers, due process is hereby denied. It should be noted however that the provision in Baltimore City providing for a postponement of up to seven days may serve to ameliorate this timely notification problem, but

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[23]The Maryland District Court Rules specifically state that no discovery is provided in landlord-tenant proceedings. *Maryland District Rules*, adopted July 1, 1971, ch. 400, "Deposition and Discovery," Rule 401(a).

only if the matter is brought to the judge's attention and he chooses to exercise his discretionary power.

At the trial itself, a tenant not subject to Baltimore City law is precluded from raising defenses based upon housing code violations. Even if the tenant had paid his rent into his own escrow account and thereby remained ready and able to pay his landlord upon rectification of the code violations, he would still be denied legal redress of such violations (especially considering the lack of effective enforcement of the housing code in Maryland that will be considered herein). Furthermore, this tenant even risks the loss of his residence either through failure to tender the rent due at trial or through a retaliatory eviction. Thus by being precluded from raising housing code violations as a legitimate defense and by being threatened by the ever-present danger of a retaliatory eviction, the tenant is effectively denied substantive redress at his trial.

Lastly, under both the Baltimore City and State procedures, which will be practically meaningless without a stay of execution, appeals require that a significant bond[24] be posted. Such a bond becomes progressively more burdensome in direct relationship to the poverty of the tenant. This hardship is compounded by the plight of the indigent, unable to obtain the necessary sureties without paying exorbitant and effectively prohibitive premiums. In addition, the bond may be set, and as commonly practiced (*Clayton v. Cherigos*, 79A Folio 206, 43324A (Cir. Ct. #2 Baltimore City, Aug. 21, 1970)) is indeed set, so as to accelerate the liability for future rent to be due during the course of appeal. The tenant must either contract for an appeal bond and thereby forfeit a premium to the bondsman or secure immediate funds to deposit in a lump sum with the court to meet the accelerated rent due. This is a practical impossibility for the indigent. Such an appeal structure effectively denies due process and equal protection to those unable economically to prosecute appeals.

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[24] A.C.M., art. 53, § 39R (1957). C.P.L.L.M., art. 4, § 9-7 (1969).

II. MARYLAND'S DISTRAINT FOR RENT PROCEEDING SERVES TO EFFECTIVELY DENY CONSTITUTIONALLY MANDATED DUE PROCESS.

A. Statement of the Applicable Law

Maryland's distraint for rent proceeding applies to unpaid rent only under a written lease for a term exceeding three months, or under a tenancy at will or a periodic tenancy that has continued for over three months.[25] In Baltimore City this procedure is not available to the landlord where the tenancy is of a term of less than three calendar months.[26] To initiate the action the landlord, as plaintiff, petitions the court naming the tenant as defendant. This petition sets forth the names and addresses of all parties and the facts as to any assignment of the lease, the premises leased, the date and term of the lease, the rent required to be paid under the lease, and the amount of arrears.[27] After filing of the distraint claim, an order levying upon all goods not exempted by law will be promptly issued and served along with the petition upon each tenant present on the leased premises. If no tenant is found thereon, then the petition and order shall be affixed in a prominent place inside the premises,[28] but entry is not to be forcible without a court order if the leased premises is used as a dwelling. Levy may, however, be made at any hour of the day or night.[29]

The tenant may file an answer setting forth any defenses including, but not limited to, the fact that excessive rent is claimed or that the rent sued upon is not distrainable. A

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[25] A.C.M., art. 53, § 9(c) (1957).

[26] C.P.L.L.M., art. 4, § 9-1 (1969). In Baltimore City, a month to month tenancy that has continued for over three calendar months is still to be treated as a tenancy for a term of one month.

[27] A.C.M., art. 53, § 11 (1957).

[28] *Id.*, § 12.

[29] *Id.*, § 15.

hearing on defendant's answer must be held on not more than ten day's notice sent by regular mail, except that the court shall have the power to postpone the proceedings on due notice to all parties. At the hearing the court is to decide all issues and may then order a sale of the goods distrained. If the tenant has failed to file an answer within seven days after levy, the court may *sua sponte* or on motion of the landlord issue an order of sale. The sale shall take place at the court's discretion but as soon as practicable.[30] Where goods have been removed the court may issue an order to "follow the goods." Entry under such order may be forcible.[31]

Service of all process after the original petition in distraint may be by ordinary mail, and a claim of nonreceipt shall not affect the validity of the notice or the order which is mailed.[32] If the court finds that notice has actually not been received and injustice will result, the court may order a stay of further proceeding until the unnotified party has had an opportunity to protect his interests.[33] An appeal from any final order or judgment may be brought within fourteen days and the trial shall be *de novo* with the right to request a jury. The appeal will not operate as a stay of the execution of a judgment or a subsequent distraining proceeding unless an approved appeal bond is filed.[34] Such a bond may require the posting of double the sum to be recovered by the landlord.[35]

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[30] *Id.*, § 21.

[31] *Id.*, § 22.

[32] *Id.*, § 37.

[33] *Id.*, § 38.

[34] *Id.*, § 39.

[35] *Id.*, art. 5, § 36.

B. Due Process Is Effectively Denied Because the Applicable Law Provides for Inadequate Notice, Unreasonably Short Time To Prepare for Trial, Unjustified Restrictions on the Defenses Available, and Overly-Burdensome Appeal Bond Requirements.

Maryland's distraint for rent proceeding provides for a more detailed fact pleading than that allowed in the summary ejectment procedure. But if this is the only information on which the tenant must rely in order to prepare a defense, it might well be inadequate and thereby prejudice such defense. Many instances exist where such a tenant might not from this pleading be adequately put on notice as to the substantive grounds available for defense. For example, a tenant may not have received notice of a rent increase through no fault of his own. The tenant may believe he had paid all his rent, but one payment may have been lost or misplaced and not sued on until now. These tenants might not from this pleading be aware of the valid defenses available to them. This problem is further compounded by the complete absence of pre-trial discovery procedures.[36]

As an alternative to personal service, the distraint procedure permits affixing the petition and levy order inside the premises. This, of course, raises the issue of actual as opposed to constructive notice. What happens if the tenant is away from home for a time, especially since these are rather summary proceedings? To some extent, because a continuance may be granted, the provisions of this section offer some protection if the court finds notice has not actually been received. However, problems still surround the requirement of a tenant's answer in seven days. In the absence of an answer, a default order of sale may be issued. It is not realistic to imagine that a court will be able to determine that notice has not actually been received without the tenant himself so informing the court.

[36] See footnote *23*, p. 9, *supra*.

The levy provisions have at least one highly suspect procedure. It may well be unreasonable to permit such a levy at any hour of the day or night without any further limitation. Due process or reasonable security of the home requires there be some restriction on the use of this levy authority, or, at the minimum, some showing of necessity for these unreasonable levies.

In his answer, the tenant probably could not raise housing code violations with effect. While the provision states that "any defenses"[37] may be asserted, in practice the operative clause following, although only illustrative of the type of defenses possible, is interpreted in a limited fashion. Even if the answer could assert such housing code violations as a defense, there is certainly no indication that the court would give any effect to such a critical assertion with basic health and safety implications.

Finally, the bond required for a stay of execution pending appeal may at the discretion of the court actually be a double rent due bond requiring sufficient security. Such a double rent bond not only is likely to be so prohibitively unreasonable as to effectively deny indigent tenants the opportunity for appeal, but also suspiciously resembles a penalty clause. Due process and equal protection cannot be so lightly and unreasonably forfeited in the name of preventing spurious appeals.

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[37] "... any defenses he may have to the action, including, but not limited to, excessive rent distrained for, or that the rent sued is not distrainable." A.C.M., art. 53, § 21 (1957).

III. THE PROCEDURE IN MARYLAND FOR TENANTS HOLDING OVER DENIES DUE PROCESS OF LAW.

A. Statement of the Applicable Law

The Maryland "tenant holding over" procedure is initiated by the lessor who desires to repossess the premises leased at will or for a definite term. Notice in writing must be given one month prior to expiration of the term or determination of said will.[38] In Baltimore City there is a detailed notice of termination. Sixty (60) days written notice to quit is generally required, except for thirty days in certain circumstances including tenancies for not more than five months.[39] This notice must be served on the tenant personally, or left at his abode or business, or with his agent or servant, or served on any occupant of the premises. If personal service cannot be effected the notice may be affixed conspicuously on the premises.[40] This notice need not state

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[38] *Id.*, § 1. The following procedures for tenants holding over in the State of Maryland shall apply to periodic tenancies by the year, by the month, and by the week. Outside of Baltimore City, notice in a year to year tenancy shall be given in writing three months before the current year's expiration except that in the case of farm tenancies it shall be given six months in advance. In the case of a monthly tenancy, notice shall be given in writing one month in advance, and one week in advance for a tenancy by the week. These same notice proceeding provisions where applicable shall also apply to cases of forcible entry and detainer. If the premises to which the lease pertains is located in any special taxing area or incorporated town of Montgomery County, nothing shall prevent the landlord and tenant from waiving in writing or altering the length of any of the notice to quit requirements. (A.C.M., art. 53, § 7 (1957)). If the tenant gives the landlord one month parol notice of his intention to remove and surrender possession at the end of the term (except three months notice is required for year to year tenancies other than farm tenancies where six months is required), then it shall not be necessary for the landlord to prove written notice to the tenant. (A.C.M., art. 53, § 8 (1957)).

[39] C.P.L.L.M., art. 4, § 9-14 (1969).

[40] *Id.*, § 9-17.

the hour by which the tenant is requested to leave.[41] The time and manner of notice may further be modified by agreement of the parties.[42] Such notice requesting the tenant to leave shall entitle the landlord to proceed in court for the speedy recovery of the premises upon expiration of this period.[43]

Under Maryland state law, if the tenant refuses to comply with the notice to vacate, the lessor may make a complaint in writing to a judge,[44] who issues his summons for the tenant to appear and show cause why restitution should not be made immediately. If either party fails to appear on the date indicated in the summons, the judge continues the case to a day at least six and no more than ten days later and notifies the parties of same.[46]

In Baltimore City, in initiating the court proceedings against a tenant holding over, if the first summons issued is returned *non est*, a second summons returnable in not less than five days is issued. If the tenant is not found, a copy of this second summons is left with the occupant of the premises or affixed to the premises if vacant. If the tenant does not appear on the date of trial assigned in the summons, the judge proceeds as if the tenant had appeared.[47] The landlord is permitted to file interrogatories to be answered by the tenant[48] and they may be served in a like

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[41] *Id.*, § 9-18.

[42] *Id.*, § 9-20.

[43] *Id.*, § 9-19.

[44] A.C.M., art. 53, § 1 (1957).

[45] *Id.*, § 2.

[46] *Id.*, § 3.

[47] C.P.L.L.M., art. 4, § 9-23 (1969).

[48] *Id.*, § 9-24.

manner.[49] The tenant shall have three days from the day of service to respond, subject to an eight day maximum extention for good cause. Upon failure to respond, the tenant loses in default.[50]

Under the laws of the State of Maryland, if the judge shall find, at the hearing, or upon failure of the tenant to appear after the summons and continuance, that the lessor had been in possession of said premises, that the lease is fully expired, that due notice has been given, and that the tenant has refused to quit, then the judge shall give judgment for restitution, issue his warrant to the constable, and assess costs against the tenant. A tenant may appeal by filing notice of his desire to do so within ten days. If the tenant desires to remain in the premises pending appeal, the notice must be accompanied by an affidavit made by the tenant before the judge or some officer empowered to take acknowledgments of deeds that this appeal is not taken for purposes of delay. This must be accompanied furthermore by a bond with one or more securities conditioned that the appeal will be prosecuted and that all rent in arrears, court costs, and losses or damages suffered by the landlord because of the tenant's holding over will be paid.[51] The appeal shall be heard between five and fifteen days after application by either party and notice will be served on the opposite party or his counsel at least five days before the hearing.[52]

Judgment for restitution will not be granted if the tenant alleges title to the premises in some third party who appears before the judge and takes an oath that he, the third party, believes he is entitled to the premises and subsequently posts a bond with two sufficient securities to prosecute this claim

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[49] *Id.*, § 9-26.

[50] *Id.*, § 9-25.

[51] A.C.M., art. 53, § 4 (1957).

[52] *Id.*, § 5.

with effect during the next court term. If the third party does not prosecute, the restitution will be granted within ten days after the end of the term.[53]

In Baltimore City, if judgment is entered against the tenant, the judge may assess damages not to exceed double the rate of rent of the tenancy, in addition to the expenses of the landlord over and above the legal costs.[54] If the judge finds for the tenant, he may levy such damages, and all related costs as seem just.[55] Rather than pursue these court proceedings, the landlord may elect to hold the lessee over as a tenant at double the former rent for the premises, subject to the former terms and conditions of payment.[56] Finally, appeals may be taken, but in order to stay execution of the judgment in the court below, a tenant is required to post a bond with security with condition to prosecute the appeal and to answer to the landlord for all costs and damages incurred in the court below as well as those sustained on appeal.[57]

B. The Applicable Law Effectively Denies Due Process to Tenants Because it Provides for Inadequate Notice, Unreasonably Short Time to Prepare for Trial, Unjustified Restrictions on the Defenses Available, and Overly-Burdensome Appeal Bond Requirements.

The law in the State of Maryland for tenants holding over is devoid of any detail as to the content of the written complaint and summons. Given the fact that prior notice of termination is critical to the subsequent suit for holding

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[53] *Id.*, § 6.

[54] C.P.L.L.M., art. 4, § 9-27 (1969).

[55] *Id.*, § 9-28.

[56] *Id.*, § 9-29.

[57] *Id.*, § 9-30.

over, it would seem imperative that it at least specify certain necessary facts, so that the tenant might have an adequate opportunity to prepare his defenses. These notification defects may be mitigated by liberally granted continuances. The statutes themselves, however, should definitely contain better provisions for notice, thus insuring due process.

Under the Baltimore City Code the actual court proceeding commences with the issuance of a summons, so minimal in content that the tenant may not have adequate notice of the claim. In this proceeding it is important to note that the landlord alone is authorized to file interrogatories. This suggests that there may indeed be real fact issues upon which the parties need to exchange information, but over which only the landlord has control, buttressed by rather severe sanctions against the tenant. Introduced here is an inequitable bias in the respective positions of the landlord and tenant, further evidenced by the landlord's unilateral power to hold the tenant to a new term at double the former rent if he so elects. Such statutory authority effectively imposes a penalty clause on every lease, and should be declared void as against public policy. Apparently, under state law, as utilized in Maryland, the tenant at the court hearing is not permitted to assert certain defenses. One such defense would be the tenant's claim that he is being evicted in retaliation for his reporting a housing or health code violation on the premises. If such housing or health codes are to have any real effect in ameliorating living conditions in this State and the nation as a whole, a goal clearly in the public interest, then retaliatory evictions must be prevented or tenants will effectively be denied the equal protection of these housing or health code laws.

In both the State and the City, the tenant holding over procedure requires a bond to stay execution of the restitution order pending appeal. In this appeal proceeding the tenant is further required to make an official affidavit attesting to the valid purposes of his appeal. Even such official assurance with related sanctions is seemingly inadequate to

satisfy the doubts surrounding tenant appeals and will not preclude the appeal bond requirement. Once again the tenant is confronted with this appeal bond that may effectively deny the opportunity to appeal, resulting in a further denial of due process, especially to indigent tenants.

IV.

THE HOUSING AND HEALTH CODES IN MARYLAND, AS ADMINISTERED BY THE RESPONSIBLE AUTHORITIES AND AS CONSTRUCTIVELY SUPPRESSED BY THE THREAT OF RETALIATORY EVICTIONS, (AT LEAST OUTSIDE BALTIMORE CITY), OFFER THE TENANT NO EFFECTIVE RELIEF IN REDRESSING HIS LEGITIMATE GRIEVANCES CONCERNING BASIC LIVING CONDITIONS.

It might be argued that housing or health code enforcement might offer adequate redress in lieu of its use as a defense to evictions. Such a proposition, while appealing in theory, in actuality is not an adequate tool to offer the tenant effective relief.

In Maryland there are housing codes in Baltimore City, Baltimore County, Anne Arundel County, Montgomery County, and less comprehensive codes in Allegany and Howard Counties. For counties without local housing codes there is a general provision of the Maryland Health Code that may arguably be invoked. Article 43, Section 103, Annotated Code of Maryland, (1957), relates to "privies, pigpens, and other noxious places",[58] and speaks in terms of the preservation of the health of any inhabitants. The basic sanctions of both the housing and health code authorities are condemnation, criminal fines and/or imprisonment[59] if voluntary compliance of the responsible party is not forthcoming. None of these remedies is likely to bring about abatement of the particular unhealthy condition.

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[58] A.C.M., art. 43, § 103 (1957).

[59] *Id.*, §§ 103 and 108.

The existing housing and health codes are inadequately and infrequently enforced. Even when such codes are in fact stringently enforced the remedies are ineffective. Condemnation proceedings will only render the tenant homeless, thus further adding to the critical housing shortage. The criminal sanctions are rarely enforced and serve only to punish the landlord, not to repair the dwelling. In fact, some landlords would rather accept the criminal fines imposed than undertake the expense of abating the housing code violations. This lack of enforcement greatly impairs and effectively undermines the deterrent effect for which purpose these sanctions were enacted.

There is available still another remedy in Maryland,[60] but one which the health and housing authorities have heretofore refused to invoke. The health or housing authority can make the necessary repairs itself, up to $500,[61] and then assess the costs of abatement against the responsible party by taking a lien on his property. This lien is not authorized as a prior lien, and therefore, practically speaking, is likely to be uncollectible. Thus, health and housing authorities have refused to avail themselves of this quasi-"self-help" remedy on the grounds of economic impracticability, and the tenant in Maryland is left with either his original unhealthy dwelling or no dwelling at all, either because of condemnation or retaliatory eviction.

CONCLUSION

Because of our substantial contact with landlord-tenant laws in Maryland, the Legal Aid Bureau, Inc., strongly believes that the decision in *Lindsey v. Normet* will be of significant importance in clarifying the meaning of due process in landlord-tenant relations. It is here that the decision in *Lindsey v. Normet* can be most meaningful.

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[60] *Id.*, §§ 111-113.

[61] *Id.*, § 111.

Guidelines are most desperately needed so that existing impediments to a constitutionally mandated court proceeding may be removed.

Clarification is exigently needed because in Maryland several laws exist which severely impede the ability of the tenant to adequately defend his legitimate interests and to meaningfully redress legitimate grievances. The decision in *Lindsey v. Normet* can serve positively and constructively to help ameliorate the burdensome plight of tenants, frequently confronted by deteriorating housing conditions, callous and uncooperative landlords, and a bewildering imbalance in the judicial procedure for redress.

The constitutional issues raised by *Lindsey v. Normet*, and similar issues presented by the Maryland statutes, have been described by this *Amicus* in the hope that this Court will recognize the urgent need for reform in the area of landlord-tenant law. The decision of the court below should be reversed and new guidelines re-establishing due process in the landlord-tenant field should be set forth.

Respectfully submitted,

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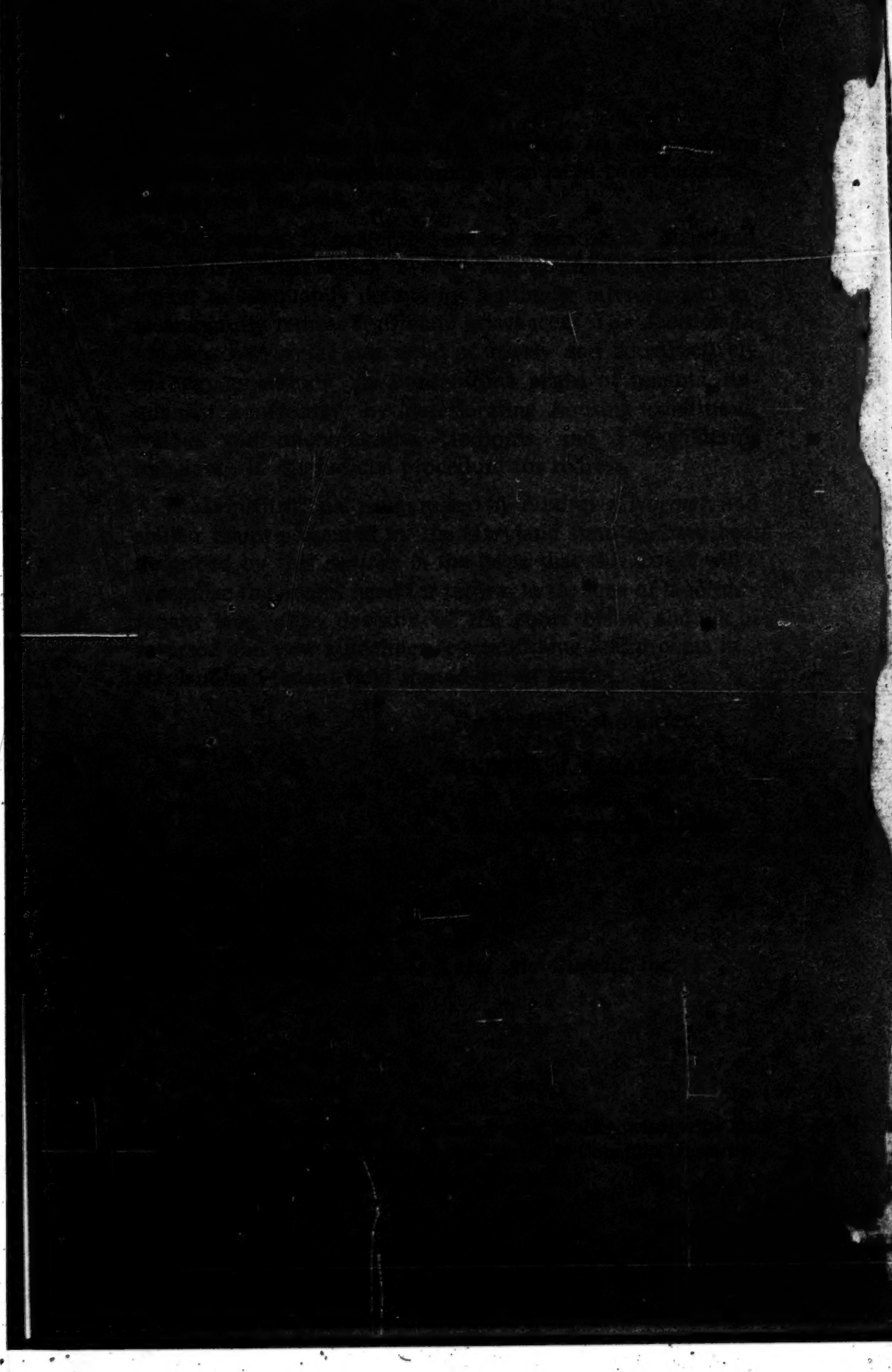
[The Legal Air Bureau and its counsel wish to acknowledge the assistance of Richard L. Wasserman, a student at the Columbia University School of Law in the preparation of this brief.]



APPENDIX

No. B

PEOPLE'S COURT
OF
BALTIMORE CITY

VS

ATTESTED COPY OF SUMMONS IN EJECTMENT

CONSTABLE

ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANT

NOTICE TO TENANT

The costs in this case are $2.50 and have been paid by the landlord.

If the premises are occupied by wife, child or dependent of a person in military service please advise the Chief Constable immediately in writing so that the provisions of The Soldiers' and Sailors' Relief Act may be put into effect if same applies. In any communication please give the number of this case.

ATTESTED COPY OF SUMMONS IN EJECTMENT

No.

PEOPLE'S COURT OF BALTIMORE CITY

28-1113-8868

FAYETTE AND GAY STS.
BALTIMORE MD. 21202

STATE OF MARYLAND, BALTIMORE CITY, TO WIT:
To J. JEROME BUTLER, Esq., Chief Constable, Greetings:

WHEREAS, _____ Lessor, by _____ his duly qualified Agent or Attorney, has this day filed his written complaint, in this court, praying to have again and repossess the premises in said City known as

No. 2E Street

rented from him by _____ Tenant, who has assigned said premises to _____ his assignee or under tenants, whose names are unknown to said Lessor, alleging there is rent due and unpaid to said Lessor the sum of _____ Dollars, 00 Cents.

FOR TRIAL ON

Witness my hand and act on this date subscribed

Chief Judge of the People's Court of Baltimore City

And that by warrant Lessor may have and again repossess the said premises, together with judgment for the amount of rent due and costs. Wherefore you are hereby ordered to forthwith summon and notify said tenant, assignees or under tenants to personally appear before WILLIAM T. TIPPETT, JR., Chief Judge of the People's Court of Baltimore City.

DATE: May 19 1975

Attest J. Jerome Butler
Chief Constable

2a

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